

CHAPTER 10-30.1 VENTURE CAPITAL CORPORATIONS

10-30.1-01. (Repealed effective August 1, 2007) Definitions. As used in this chapter, unless the context otherwise requires, the term:

1. "Qualified entity" means a business that:
 - a. Is a small business concern as defined under Public Law No. 85-536, § 2[3], 72 Stat. 384; 15 U.S.C. 632, as amended.
 - b. Is a business which through a process employing knowledge and labor adds value to a product for resale.
 - c. Has its principal office in this state and is primarily doing business within this state.

However, after July 1, 1989, a "qualified entity" does not include any business or an affiliate of a business that owns tax-exempt securities.

2. "Taxpayer" includes any individual, corporation, or fiduciary subject to a tax or a duty to file a tax return imposed by chapter 57-38.
3. "Venture capital corporation" means a corporation or limited liability company that is organized for the specific purposes and under the specific conditions provided for in this chapter.

10-30.1-02. (Repealed effective August 1, 2007) Certification - Investment reporting by venture capital corporations. At the request of a venture capital corporation, the secretary of state shall certify whether a business meets the requirements of a qualified entity as defined in section 10-30.1-01. The secretary of state shall establish the necessary forms and procedures for certifying qualified entities. Within fourteen days of making any investment, a venture capital corporation must give notice of the investment to the secretary of state. The notice must contain the name of the business in which the venture capital corporation invested, the dollar amount of the investment, and the date on which the investment was made.

10-30.1-03. (Repealed effective August 1, 2007) Unqualified investment - Civil penalties enforcement. The secretary of state shall notify the attorney general of any investment made by a venture capital corporation in a business not certified as a qualified entity under section 10-30.1-02. The attorney general shall assess a civil penalty for an investment made by a venture capital corporation in a business not certified as a qualified entity under section 10-30.1-02 and collect such civil penalty by a civil proceeding in any appropriate court. The civil penalty is twenty-five percent of the amount invested by the venture capital corporation in the business not certified as a qualified entity.

10-30.1-04. (Repealed effective August 1, 2007) Venture capital corporation - Incorporation.

1. To carry out the purposes of this chapter, a venture capital organization may be formed under chapter 10-19.1 if a corporation or under chapter 10-32 if a limited liability company. The articles of incorporation or articles of organization of a venture capital organization must comply with subsections 2 through 9.
2. The purpose of a venture capital corporation or limited liability company must be solely to raise funds to be used to make investments in, and provide financing to, qualified entities in a manner that will encourage capital investment in the state, encourage the establishment or expansion of business and industry, provide

additional jobs within the state, and encourage research and development activities in the state.

3. Each director of a venture capital corporation or each governor of a venture capital limited liability company must be a North Dakota resident and must have a minimum investment in the venture capital corporation or limited liability company of one thousand dollars.
4. A venture capital corporation or limited liability company shall provide financing to qualified entities to be used solely for the purpose of enhancing the production capacity of the qualified entity or the ability of the qualified entity to do business in this state. The venture capital corporation or limited liability company may establish and regulate terms and conditions, consistent with this chapter, with respect to the financing. The financing may include any combination of equity investments, loans, guarantees, and commitments for financing, but no more than twenty-five percent of the stated capital of a venture capital corporation or limited liability company may be invested in any one qualified entity. For purposes of this chapter, "one qualified entity" means a single entity or a group of affiliated entities that are engaged in a unitary business.
5. Business may not be transacted or indebtedness incurred by the venture capital corporation or limited liability company, except such as is incidental to the venture capital corporation's or limited liability company's organization or to obtaining subscriptions to or payment for the venture capital corporation's or limited liability company's shares or membership interests, until the venture capital corporation or limited liability company receives consideration for such shares or membership interests equal to at least two hundred fifty thousand dollars, which amount is the initial stated capital of the venture capital corporation or limited liability company.
6. All consideration received from the sale of shares or membership interests must be placed in an interest-bearing escrow account in the Bank of North Dakota, except up to ten percent of the proceeds may be withheld for use in activities incidental to the venture capital corporation's or limited liability company's organization or to obtaining subscriptions to or payment for the venture capital corporation's or limited liability company's shares or membership interests.
7. If at any time within one year of the issuance of the certificate of incorporation of the venture capital corporation or certificate of organization of the limited liability company, the venture capital corporation's or limited liability company's stated capital equals at least two hundred fifty thousand dollars, or such greater amount established by the articles of incorporation, the articles of organization, or bylaws, the funds held in escrow pursuant to subsection 6 must be released to the venture capital corporation or limited liability company for use and disposition according to the venture capital corporation's or limited liability company's articles of incorporation, articles of organization, or the bylaws.
8. If within one year of the issuance of the certificate of incorporation of the venture capital corporation or the certificate of organization of the venture capital limited liability company, the venture capital corporation's or limited liability company's stated capital has not at any time equaled at least two hundred fifty thousand dollars, or such greater amount established by the articles of incorporation, the articles of organization, or the bylaws, the venture capital corporation's or limited liability company's certificate of incorporation or certificate of organization must be dissolved or terminated, and all funds held in escrow pursuant to subsection 6, and all other remaining funds, must be returned to the investors in proportion to the investor's investments.
9. Before any investment in a venture capital corporation or limited liability company, the venture capital corporation or limited liability company shall make written

disclosure of the provisions contained in subsections 5 through 8 to the potential investor.

10. If a venture capital corporation or limited liability company does not invest or provide financing with eighty percent of the funds received from investors within two years of receiving the funds, the venture capital corporation or limited liability company must be dissolved or terminated and all funds held by the corporation or limited liability company must be returned to the investors in proportion to the investor's investments.

10-30.1-05. (Repealed effective August 1, 2007) Tax credit.

1. Subject to sections 10-30.1-06, 10-30.1-07, and 10-30.1-08, a taxpayer is entitled to a credit against any state income tax liability which may be imposed on the taxpayer for a particular taxable year that begins after December 31, 1984, if the taxpayer makes an investment in a venture capital corporation. However, a taxpayer that makes an investment in a venture capital corporation on or after July 1, 1989, is only entitled to a tax credit if the venture capital corporation uses the funds it receives from the taxpayer to invest or provide financing to qualified entities, which entities do not include a business or an affiliate of a business that owns tax-exempt securities. Investments by Myron G. Nelson Fund, Incorporated, in a venture capital corporation do not qualify for the tax credit provided by this chapter. Tax credits under this chapter are not subject to payment of interest as provided in section 57-38-35.1. For a venture capital corporation that was organized before January 1, 1989, which invested in an entity or affiliate of an entity that owned tax-exempt securities, investments made in that venture capital corporation after February 28, 1991, do not qualify for the tax credit provided by this chapter.
2. The state tax commissioner shall administer sections 10-30.1-05 through 10-30.1-10. The state tax commissioner may adopt rules, in accordance with chapter 28-32, consistent with and necessary for the administration of sections 10-30.1-05 through 10-30.1-10.

10-30.1-06. (Repealed effective August 1, 2007) Amount of tax credit. Subject to sections 10-30.1-07 and 10-30.1-08, the maximum amount of tax credit a taxpayer may receive is equal to twenty-five percent of the taxpayer's investment in any venture capital corporations, up to a total tax credit of two hundred fifty thousand dollars under this chapter. However, a taxpayer is not entitled to a tax credit if the taxpayer has purchased stock or membership interests from, and sold stock or membership interests back to, the venture capital corporation in a manner that indicates that the sole purpose of the taxpayer's activities was to avoid paying state income tax by receiving additional tax credits.

10-30.1-07. (Repealed effective August 1, 2007) Taxable year for credit.

1. The tax credit must be credited against the taxpayer's income tax liability for the taxable year in which full consideration for the investment in the venture capital corporation is received by the venture capital corporation. If the amount of the tax credit exceeds the taxpayer's tax liability for that taxable year, the amount of the credit which exceeds the tax liability may be carried forward, to the extent not already used as a credit pursuant to this section, as a credit against the taxpayer's state income tax liability for seven taxable years following the taxable year in which full consideration for the investment is received.
2. A taxpayer is eligible for a tax credit under this chapter on the date the venture capital corporation receives full consideration for the investment purchased by the taxpayer in the venture capital corporation. In the event the venture capital corporation must return the taxpayer's investment pursuant to subsection 8 or 10 of section 10-30.1-04, any tax credit taken by a taxpayer for the investment under this chapter plus penalty and interest as provided in section 57-38-45 must be paid to the

state tax commissioner; however, the taxpayer is entitled to retain a percentage of the tax credit equal to the percentage of the taxpayer's investment not returned by the venture capital corporation, up to a maximum percentage of ten percent.

10-30.1-08. (Repealed effective August 1, 2007) Tax credit limits. The total amount of investments for which tax credits are allowed for all taxpayers under this chapter for the period beginning January 1, 1989, and ending December 31, 1990, is one million dollars. If investments in venture capital corporations reported to the state tax commissioner pursuant to section 10-30.1-10 exceed the limits on investments for tax credit imposed by this section, the credit must be allowed to taxpayers in the chronological order of their investments in the venture capital corporations as determined from the forms provided for in section 10-30.1-10.

10-30.1-09. (Repealed effective August 1, 2007) Tax credit - Procedure. To receive the tax credit provided by this chapter, a taxpayer must claim the tax credit on the taxpayer's annual state income tax return in the manner prescribed by the state tax commissioner and file with the taxpayer's annual state tax return a copy of the form issued by the venture capital corporation as to the taxpayer's investment in the venture capital corporation pursuant to section 10-30.1-10. The tax credit provided for in this chapter, including carryforwards, may not be claimed by taxpayers filing income tax returns pursuant to the provisions of section 57-38-30.3.

10-30.1-10. (Repealed effective August 1, 2007) Investment reporting forms. Within thirty days of the date on which an investment in a venture capital corporation is purchased, the venture capital corporation shall file with the state tax commissioner and provide to the investor completed forms prescribed by the state tax commissioner which show as to each investment in the venture capital corporation the following:

1. The name, address, and identification number of the taxpayer who purchased the investment;
2. The dollar amount paid for the investment by the taxpayer; and
3. The date on which full consideration was received by the venture capital corporation for the investment.